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ZONING BOARD OF ADJUSTMENT

Monday, July 13, 2015 @ 3:00 PM

Third Floor Council Chamber

101 1st Street SE, Cedar Rapids IA 52401

DECISION AND ORDER

Members Present: Chair Todd Barker, Sue Lowder, Nancylee Ziese and Jim Vancura

Member Absent: Vice-Chair Bill Vernon

Staff Present: Joe Mailander, Vern Zakostecky, Dave Houg, Kevin Ciabatti, Sandy Pumphrey and Patricia Pfiffner

Others Present: Chad Pelly - Ahmann Company re Clock House, LLC, Michelle Morrison, Tina Smith, S&J Homes – Sean Shea, Bryan Moeller,

New Business

Chair, Todd Barker called the July 13 2015 Regular Board of Adjustment meeting to order at 3:00 PM. Attendance taken and a quorum declared. The Board of Adjustment is a Quasi-Judicial Board created by the City of Cedar Rapids. The Board is empowered to vary the regulations of the Zoning Ordinance in harmony with its general purpose and intent where the Board makes Finding of Fact that there are practical difficulties or unnecessary hardships in the way of carrying out the literal provisions of the Ordinance.

This Board reviews Conditional Use requests. When considering a Conditional Use, the Board will keep in mind the following: Is the requested use consistent with the intent and purpose of the Ordinance and with the Future Land Use policy plan; will the use have a substantial adverse effect upon adjacent property and the character of the neighborhood; and will the proposed use be compatible with the immediate neighborhood. This Board also reviews Variance requests. A Variance request should only be granted if the Petitioner establishes that an unnecessary hardship will result if the Zoning regulations are enforced. There are seven criteria for actions on a Variance which were to be addressed in your application. To review they are: Unique Circumstances, Not exclusively for financial gain, Hardship not self-created, Substantial rights denied, not special privilege, not detrimental and No other remedy. A general rule of thumb is that a Variance should prevent a hardship, not grant a special privilege not available to other landowners in similar situation.

Typically “Unnecessary Hardship” means: The land in question cannot yield a reasonable return if used only for the purpose allowed in that zone; the issue in question is due to unique circumstances and not to the central

conditions of the neighborhood; the hardship must not be self-created; and the use authorized by the Variance will not alter the essential character of the locality.

We are an independent volunteer Board of citizens appointed by the Mayor and approved by the City Council. We are not part of the City Administration. We are governed by both City and State Codes and Ordinances. The Board is made up of five Board members. The Chair cannot make a motion but has a vote. There must be three (3) affirmative votes to pass. No motion made by the Board will be the same as a denial. Today we have 5 members present.

As a Board of the City, we welcome all testimony. We make our decisions based on the facts and evidence allowed under City Code, presented at this open meeting. While your case is being read by our Secretary we ask that the Petitioner comes forward so your testimony can be heard and recorded. Please give your name and address for the record. You will then be able to present your case. If the proceedings become lengthy, we may ask that testimony be focused on the new facts or evidence not already presented. We will then ask for any objectors. At that time objectors will come forward, state name and address for the record, and then state your objections. The Board will then give the City Staff an opportunity to present information for the case. I will then call for any Board questions or any Board discussion. Final summaries and additional comments may then take place. Based on a motion and a second the Chair will then call for a vote. If your Variance is approved, please understand that you may still have to comply with other regulations and codes, such as applicable Building Codes, to work within. Please visit with the Building Services Department Official for any clarifications. Today there are 4 Board Members present. We do have a quorum. Nancy Lee Ziese moved to approve the June 8, 2015 Board of Adjustment minutes & June 24, 2015 Special Board of Adjustment Meeting, seconded by Sue Lowder, motion carried.

No Petitioner Present

COND-14051-2015: A Public Hearing regarding an application submitted by Petitioner Hurricane Grill & Wings representing SDG Macherich Properties whose address is 4444 1st Avenue NE, Suite 602, Cedar Rapids, IA *Owner(s)/Titleholder(s)* hereby petitioning the Board of Adjustment to authorize the issuance of a Certificate of Occupancy which is listed and described as an Outdoor Service Area in Subsection 32.04.020. of the Municipal Code, and which is to be located the C-2 Zone District, under the authority granted to the Board of Adjustment by Section 32.02.030.D of said Municipal Code.

Findings of Fact: The Board finds that the Development Services staff has examined the petition of Barmuda Companies dba Hurricane Grill & Wings requesting Conditional Use approval for an "Outdoor Service Area" for property at Lindale Mall - 4444 First Avenue NE, Suite 602 and zoned C-2, Community Commercial Zone District. The Board finds that Hurricane Grill & Wings wishes to receive approval for an outdoor service area where alcohol can be served. The plan submitted shows the following characteristics: Total area of mall: 250,315 sq. ft. total area of restaurant: 5,090 sq. ft., total size of proposed outdoor service area: 64 sq. ft. (2 tables). At its meeting held on July 2, 2015 the City Planning Commission recommended approval of this request subject to conditions. The Board finds no objectors present.

Disposition: By a vote of 4-0 the Board of Adjustment approved COND-2015-14051 an application submitted by Petitioner Hurricane Grill & Wings representing SDG Macherich Properties whose address is 4444 1st Avenue NE, Suite 602, Cedar Rapids, IA *Owner(s)/Titleholder(s)* hereby petitions the Board of Adjustment to authorize the issuance of a Certificate of Occupancy which is listed and described as an Outdoor Service Area in Subsection 32.04.020. of the Municipal Code, and which is to be located the C-2 Zone District. Sue Lowder moved for approval subject to conditions. No second. Nancy Lee Ziese moved to Table due to no Petitioner present. Jim Vancura seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND-14051-2015 is hereby Tabled.

COND-18044-2015: A Public Hearing regarding an application submitted by Petitioner, Clock House LLC, representing same hereby petitioning the Board of Adjustment to authorize is issuance of a Certificate of Occupancy for a Conditional Use, which is listed and described as an Outdoor Service Area in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 601 1st Street SE, Cedar Rapids, IA located in C-4 Zone District, under the authority granted to the Board of Adjustment by Section 32.02.030.D of said Municipal Code.

Findings of Fact: The Board finds that Petitioner is requesting approval for the service of alcohol on a proposed outdoor patio as part of the renovation of the former Great Furniture Mart into a mixed-use development. The site plan submitted shows the following characteristics: Total area of building footprint: 12,315 s. f., Total size of proposed outdoor service area: approximately 2,500 s. f. , Total parking required: none required in the C-4 District, Total parking provided: 77 spaces (63 surface & 14 underground). The Development Services staff has examined the petition of Clock House, LLC. At its meeting held on July 2, 2015 the City Planning Commission recommended approval of this request subject to conditions. The Board finds no objectors present. At its meeting held on June 11, 2015 the City Planning Commission recommended approval of this request subject to conditions. Chad Pelly, Ahmann Company, re Clock House LLC appeared to testify. He stated this is the former Great Furniture Mart, 2,500 square foot outdoor service area. The CPC recommended conditions and is in agreement with them. Nothing further to add. The Board finds no objectors present.

Disposition: By a vote of 4-0 the Board of Adjustment approved COND-18044-2015 an application submitted by Petitioner, Clock House LLC, representing same hereby petitioning the Board of Adjustment to authorize is issuance of a Certificate of Occupancy for a Conditional Use, which is listed and described as an Outdoor Service Area in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 601 1st Street SE, Cedar Rapids, IA located in C-4 Zone District. Nancy Lee Ziese moved for approval subject to conditions. Sue Lowder seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND-18044-2015 is hereby approved subject to conditions:

1. Buildings/appurtenances shall not encroach upon right-of-way without obtaining appropriate approval.
2. No amplified outdoor music such as bands, karaoke, and public address systems, etc. shall be allowed in the outdoor service area.
3. That the current project is not complete and fencing and a gate must still be installed. The gate must meet all Fire Department regulations related to entry/egress points. The gate shall be used only as an emergency entry/egress route unless the beer garden is staffed continually during normal business hours.
4. That the outdoor service area must have fencing. The fencing requirements, for an outdoor service area with limited staffing, must be of sufficient height to deter the passing of alcoholic beverages over the top of the fence. The fence must also be designed in such a manner as to prohibit the passing of alcoholic beverages through it. The fencing requirements, for an outdoor service area that is staffed full time during normal business hours, can vary some from the above requirements. For those outdoor service areas a specific fence design must be submitted and it will be evaluated on a case-by-case basis.
5. That the Police Department shall re-inspect the outdoor service area PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY.

No Petitioner Present

COND-18013-2015: A Public Hearing regarding an application submitted by Petitioner Bill Knapp representing Robert & Jitka Schaffer whose address is 100 16th Avenue SW, Cedar Rapids, IA *Owner(s)/Titleholder(s)* hereby petitioning the Board of Adjustment to authorize the issuance of a Certificate of Occupancy for a Conditional Use, which is listed and described as a ground floor dwelling unit in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 100 16th Avenue SW, Cedar Rapids, IA located in the C-3 Zone District, under the authority granted to the Board of Adjustment by Section 32.02.030.D of said Municipal Code.

Nancy Lee Ziese moved to Table COND-18013-2015. Sue Lowder seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND-14051-2015 is hereby Tabled.

V32-19157-2015: A Public Hearing regarding an application submitted by Petitioner, Michelle Morrison, hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to install a new privacy fence 6 feet in height in the required front yard at zero setback in lieu of the 25 feet front yard setback required on the property at 2154 F Avenue NE, R-2 Single Family Residence District.

Findings of Fact: The Board finds that Subsection 32.05.010.B.1 – Dimensional Standards for Residential District Table states: The minimum front yard setback for the R-3 District is 25 feet. The Board finds that Subsection 32.05.010.D.2.b.ii – Height in Front Yard states: No fence, wall or combination of such items exceeding a height of three (3) feet above ground level shall be erected within the required front yard in any district unless higher screening is required by Sec. 32.050.030.A. The Board finds that Petitioner submitted the required criteria sheet indicating the fence improvement is not for a financial gain. Further, the fence improvement is a safety feature and does not provide any other benefits except for the safety. Granting the Variance will not be detrimental to the public. The Board acknowledges that the property has reasonable safety concerns considering high pedestrian traffic along the public trail and individuals who are using their property as a cut-through. They would like to keep their family and family pets safe and secure, as well as enjoy the privacy in their yard. The Board acknowledges the single family dwelling was built in 1941 with a detached accessory structure (residential garage) built in 1942 on the irregularly shaped lot. Behind this property is a popular walking trail. The Board acknowledges that on June 5, 2015 the property owner obtained a Building Permit (BLDR-037826-2015) for an 80 foot long privacy fence that will be installed along the rear property line. In order to create some privacy and secure the west portion of their yard they would like to install a new privacy fence around remaining portion of their property as indicated the site plan. The Board finds that Petitioner has public coming through the yard, public walking off the trail onto the private property and lack of privacy with the continued disruption. The Board finds no objectors present.

Disposition: By a vote of 4-0 the Board of Adjustment approved V32-19157-2015 an application submitted by Petitioner, Michelle Morrison, hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to install a new privacy fence 6 feet in height in the required front yard at zero setback in lieu of the 25 feet front yard setback required on the property at 2154 F Avenue NE, R-2 Single Family Residence District. Nancy Lee Ziese moved for approval citing unique circumstances subject to condition. Sue Lowder seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V32-19157-2015 is hereby approved as written, subject to condition:

1. A Building Permit is required prior to construction.

V33-19580-2015: A Public Hearing regarding an application submitted by Petitioner Tina Smith hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 16 feet by 24 feet single story detached accessory structure (residential garage with up to 1 foot overhang including the gutters). A new detached accessory structure would be 1 foot from the interior side property line (West elevation) in lieu of the minimum 3 feet interior side setback required, and the overhang, including the gutters will be as close as zero setback in lieu of 2 feet setback required. In addition to this, it would be at zero setback (with no overhang) from the rear property line (South elevation), in lieu of minimum 3 feet setback required on the property located at 2043 Blake Blvd SE, R-3 Residential Zone District.

Findings of Fact: The Board finds that Subsection 32.05.010.A.4.a.iv. (ORD. 027-14) – Detached accessory structures and buildings Shall not be located closer than three (3) feet to any interior side or rear lot line. The roof overhang of any accessory structure shall not be located closer than two (2) feet to any interior or rear lot line. The Board finds that Subsection 32.05.010.D.2.a. Table 32.05-3 states architectural features (ie., sills, eaves, and cornices), gutters and downspouts shall encroach no more than 2 feet into the yard, as measured from the building; except when the yard is 9 feet or more in depth they may encroach no more than 3 feet. The Board finds that the Petitioner submitted the required criteria sheet indicating the new accessory structure is not for a financial gain. This corner lot is approximately 7,605 square feet in size. The total footprint of the proposed detached accessory structure is 384 square feet. The existing detached accessory structure is 93 years old. The property owner would like to replace it with a new detached accessory structure and create a new driveway access from Blake Blvd SE. They would like to be able to create a functional patio area between the house and the South lot line by removing a portion of the driveway leading to the street and turn this area into a back yard. The location of the house on this corner lot limits usable yard space. The proposed structure will provide the property owner additional storage space and ability to secure their vehicles, belongings, tools and equipment required to maintain the property. There are several other properties within this block that have their detached accessory structures built with the reduced interior side yard setback. The Board acknowledges that the single family dwelling with the detached accessory structure was built in 1922. The Board acknowledges that an existing detached accessory structure is 180 square feet in size. By replacing it with the

new detached accessory structure 384 square feet in size, it will create the storage area for lawnmowers, items that they would like to save from elements, and tools utilized for the property maintenance. The Board finds that the proposed 16 feet by 24 feet two-stall detached garage with 12 inch overhang (including the gutters) would be 12 inches away from the side lot line and at zero feet away from the rear lot line. The proposed garage will remain 3 feet away from the principle structure (house). The Board finds the existing driveway and detached accessory structure allows for two off-street parking spaces with or without the proposed garage. The Board acknowledges that reduced setbacks for detached accessory structures (garages) is found among several properties within this block. Two adjacent neighbors provided notarized statements indicating that they have no objections to this request. The Traffic Engineering reviewed submitted site plan. They have no objections. The Board finds no objectors present.

Disposition: By a vote of 4-0 the Board of Adjustment approved V33-19580-2015 an application submitted by Petitioner Tina Smith hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 16 feet by 24 feet single story detached accessory structure (residential garage with up to 1 foot overhang including the gutters).

A new detached accessory structure would be 1 foot from the interior side property line (West elevation) in lieu of the minimum 3 feet interior side setback required, and the overhang, including the gutters will be as close as zero setback in lieu of 2 feet setback required. In addition to this, it would be at zero setback (with no overhang) from the rear property line (South elevation), in lieu of minimum 3 feet setback required on the property located at 2043 Blake Blvd SE, R-3 Residential Zone District. Nancy Lee Ziese moved for approval citing not detrimental. Sue Lowder seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V33-19580-2015 is hereby approved as written, subject to conditions:

1. Building permit is subject to historic review and all applicable codes, including but not limited to Building and Fire Code.
2. For a residential use only.

No Petitioner Present

V35-19580-2015: A Public Hearing regarding an application submitted by Petitioner S&J Homes for Nichole M Gott hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 3.5 feet by 8 feet open deck/landing with possible steps to grade that would be as close as 2.5 feet from the interior side property line in lieu of the minimum 3 feet required setback on the property at 804 G Avenue NW.

OLD BUSINESS

V53-15247-2014: Heard at the BOA Meeting 12-8-2014

A Public Hearing regarding an application submitted by Petitioner Bryan Moeller, 1637 5th street NW, (Owner/Titleholder) hereby appealing to the Board of Adjustment the decision of the City Zoning Inspector denying a Building Permit to construct a new single family dwelling and a Certificate of Occupancy to maintain an existing detached accessory building (560 square feet residential garage) that would remain on the residential lot more than one hundred and twenty (120) days prior to the time of completion of the construction or establishment of the principal structure or use to which it is accessory on the property at 1637 5th Street NW, R-3, 100 year floodplain. Following discussion Bill Vernon moved for approval citing not detrimental. Todd Barker seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V53-2014-15247 is hereby approved as written.

Findings of Fact: The Board finds the Petitioner wishes to construct a new single family dwelling and a Certificate of Occupancy to maintain an existing detached accessory building. City Zoning Administrator, Vern Zakostelecky, explained the lot has frontage on 5th Street which connects to 1st Street at this location where you can see the existing garage that currently sits on the lot. The northwest Flood Mitigation Overlay District which was adopted last year. Basically what that district does in relationship to district boundaries is restrict building of new homes and other structures within this area. These are just some of the restrictions from the Ordinance as part of this Overlay District. This district was set up to allow people who had existing structures maintain them but not put significant improvements in them so that at some point and time when flood mitigation is built the City has to negotiate to purchase these properties and are not purchasing them at extremely higher dollar amounts than what they would have based on today's dollar values. Section 32.04.020.C talks about accessory structures on a lot; basically what that says is you cannot have accessory structures – like a garage – on a residential lot more than 120 days without starting construction of a primary structure. If the Board would chose not to grant the Variance today Staff would ask that a timeline be put on that the garage be removed by no later than November 15, 2015. Sandy Pumphrey Project Engineer with City Flood Control System Team. As part of That Team I am here to register attention to the issuance of the Building Permit for this particular property. On April 30, 2015 Jim Halverson from HR Green and I met with Mr. Moeller explaining the general proposed Alignment Plan and the need for acquisition of this subject property subject to Council approval. On June 23, 2015 City Council improved that plan which included an acquisition policy that states properties with buildings or related improvements on the unprotected side of the flood control system are subject to acquisition. Further the properties with vacant lots or parcels on the flood control system shall be acquired by the City. Should the Permit be granted for this particular project? the City will likely come in at a later date and look to acquire the property for that project. As a result Staff would like to recommend denial of the Building Permit.

Chairman, Todd Barker, asked Staff that if this request is denied by the Board would they have to condition the removal or asked if that is merely a Code Enforcement issue?

Zakostelecky stated since there has been some extensions allowed Staff would ask that Board would make it a condition of Denial of the Building Permit.

Bryan Moeller, 1637 5th Street NE, appeared to testify and answer questions. He stated he met with the City on April 30th and by then a mandate had already been passed that no Building Permits were authorized and at that point couldn't do anything even before the Ordinance was passed in June. Moeller states this is a unique situation as most persons already have a home that they can live in – I do not. In talking with Jim Halverson, HR Green, he said the way that the City is planning on executing the levy in the Time Check area is long-term at 10 to 20 year's minimum before being executed. Moeller said that as far as the reason they are trying to offer the people in that area as much time to live there as they can. In the Penn Avenue NW area on the map - the residents have the right to obtain a Building Permit and they are actually outside of the Northwest Overlay District – so my closest neighbor - has the right to pull permits and I do not.

Chair Barker said it seems like you owned this property prior to the flood. Moeller replied correct, and stated that he actually talked with the City to determine what they were doing and remarked that he did not want to

be in the way if they were going to build along the 1st Street area; why should he build there if that is where the levy was going. Barker asked if this was his primary personal residence prior to the flood. Moeller replied no, stating he purchased a small home waiting on this but his plan always was to build there. He actually lived in the house for 3 days before the flood – there was an existing structure. The structure was demolished – but not the garage; nobody had ever said a word about it until the Ordinance came out. No one ever said – you need to tear it down. Nancy Lee Ziese asked what the benefit was in maintaining this property - keeping it. Moeller replied that he wants to build there and that is his primary purpose. I am just asking for the same right as the other people down there – anybody along Ellis Blvd. still has the right to pull a Building Permit at this point – how come I can't? They are in direct line of where the levy will be put.

Pumphrey explained the position of the levy was determined basically by being able to weave through the neighborhood protecting as many properties as possible yet being sensitive to the context of the neighborhood. Barker questioned if the City has offered to purchase the property. Moeller replied yes, stating that is not what he wants to do and actually has talked with the City numerous times about it. Again, it is very long term – 10 plus / 20 plus years before this could be done and the project is very far down the list of how they are going to do this. Sue Lowder stated the City would be very remiss not to plan 10 to 20 years out and to allow persons to buy lots or construct homes when the City at an extra expense may be purchasing a home at higher value than what it is today.

Pumphrey stated there is a difference between the timeline for acquisition and the timeline for construction. The timeline that Mr. Moller references here is the anticipated construction the acquisition plan suggests that the City is free to purchase property long before we have to use them for the system itself. We could actually purchase it today. Petitioner stated he has always wanted to build in this area, its beautiful, and feels his rights are denied - not equal to others. The proposed plans may not be accomplished even in 10-20 years. And others are given rights that I am not. Lowder asked how can we allow people to build down there when we know the City is going to buy that property at some point in time. He stated again that he is not given the same rights as his neighbor who can go down and pull a Building Permit. Nancy Lee Ziese stated but your neighbor is in the right district to do that and you are not. Moeller replied yes, they are on the other side of the levy. Barker stated this Board has really tried to work with flood victims and the whole situation regardless of the outcome is very tough and is something that Board has tried to take into extreme consideration on flood related matters before this Board. No objectors present.

Disposition: By a vote of 4-0 the Board of Adjustment denied an application submitted by Petitioner Bryan Moeller, 1637 5th street NW, (Owner/Titleholder) hereby appealing to the Board of Adjustment the decision of the City Zoning Inspector denying a Building Permit to construct a new single family dwelling and a Certificate of Occupancy to maintain an existing detached accessory building (560 square feet residential garage) that would remain on the residential lot more than one hundred and twenty (120) days prior to the time of completion of the construction or establishment of the principal structure or use to which it is accessory on the property at 1637 5th Street NW, R-3, 100 year floodplain. Following discussion Nancy Lee Ziese moved to deny V53-2014-15247 subject to condition. Sue Lowder seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V53-2014-15247 is hereby denied.

1. Existing structure be removed by 11-15-2015

